

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JOHN R. OLIVER,	:	4:CV-08-1404
	:	
Plaintiff,	:	(Judge McClure)
	:	
v.	:	(Magistrate Judge Blewitt)
	:	
JEFFREY BEARD, et al.,	:	
	:	
Defendants.	:	

ORDER

September 10, 2008

BACKGROUND:

On October 6, 2006, plaintiff John R. Oliver, a state prisoner at the State Correctional Institution at Rockview in Bellefonte, Pennsylvania (“SCI-Rockview”), proceeding pro se, commenced civil action number 08-796 by filing a complaint under 42 U.S.C. § 1983. (Civ. No. 08-796 Rec. Doc. No. 1.) That complaint contains various allegations concerning deliberate indifference to his serious medical needs while incarcerated at SCI-Rockview for wrist injuries sustained after he allegedly fell on a tray while working in the prison tray room.

The matter was initially referred to United States Magistrate Judge Thomas M. Blewitt. On May 12, 2008, after conducting an initial screening of the

complaint pursuant to 28 U.S.C. § 1915A, the magistrate judge issued a report and recommendation recommending that the complaint be dismissed as to all defendants except for one. (Civ. No. 08-796 Rec. Doc. No. 7.) On June 16, 2008, we adopted the magistrate judge's report in full and dismissed all defendants except for one defendant who is not named in this action. (Civ. No. 08-796 Rec. Doc. No. 14.)

On July 28, 2008, Oliver commenced the instant action with the filing of a complaint also under 42 U.S.C. § 1983. This complaint names the same seven defendants who were dismissed in Civ. No. 08-796 and similarly claims that defendants were deliberately indifferent to his serious medical needs for his wrist injuries sustained in his fall at the prison.

On August 5, 2008, the magistrate judge issued a report and recommendation that was docketed under both case numbers that recommended that the instant case be consolidated with Civ. No. 08-796, and that all seven defendants be dismissed for the same reasons they were dismissed in the Civ. No. 08-796 action. Plaintiff filed objections to the report and recommendation on August 14, 2008, with the case caption for Civ. No. 08-796, and thus were not docketed in this action, but under Civ. No. 08-796. (Civ. No. 08-796 Rec. Doc. No. 29.)

Plaintiff filed a Motion to Appoint Counsel and a “Motion for Order to Stop Filing Fees” on August 14, 2008. (Civ. No. 08-1404 Rec. Doc. Nos. 8 and 9.)

We agree with the magistrate judge that the complaint in the instant case raises essentially the same claims as were dismissed against the defendants in Civ. No. 08-796. Thus, the claims against the defendants here should be dismissed for the same reasons as were set forth in our Order in Civ. No. 08-796. (Civ. No. 08-796 Rec. Doc. No. 14.) However, instead of consolidating the actions, we will dismiss this action for failure to state a claim on which relief may be granted, pursuant to 28 U.S.C. 1915(e)(2)(B)(ii). Plaintiff’s objections are overruled.

Plaintiff’s Motion to Appoint Counsel and “Motion for Order to Stop Filing Fees” are denied as moot.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. Plaintiff’s motion to proceed in forma pauperis is GRANTED. (Rec. Doc. No. 2.)
2. We adopt the magistrate judge’s report and recommendation in part regarding the reasoning for the dismissing of all defendants. (Rec. Doc. No. 6.)
3. The complaint is dismissed as to all defendants pursuant to 28 U.S.C.

§1915(e)(2)(B)(ii).

4. Plaintiff's motion to appoint counsel (Rec. Doc. No. 8) and "Motion for Order to Stay Filing Fees" (Rec. Doc. No. 9) are denied as moot.

s/James F. McClure, Jr.
James F. McClure, Jr.
United States District Judge